

ASKIA WASHINGTON, PRO SE
PETITIONER,

CRIMINAL DOCKET# 13-cr-171-2

VS.

UNITED STATES OF AMERICA.
RESPONDENT.

MOTION REQUESTING REOPENING OF
SELECTIVE PROSECUTION HEARING
BASED ON RACIAL PROFILING

PURSUANT TO COURT R. 160(b)(2), (3), (6)

"NEWLY DISCOVERED EVIDENCE"

RECEIVED

JUL 02 2015

DEAR GENTLEMEN:

PETITIONER ASKIA WASHINGTON, PRO SE, RESPECTIVELY SEEKS TO RE-OPEN HIS MOTION FOR SELECTIVE PROSECUTION BASED ON THE GROUNDS OF RACIAL PROFILING BY THE ALCOHOL, TOBACCO, AND FIREARM AGENCY - HEREAFTER KNOWN AS 'A.T.F.'. IT IS OF RECORD THAT AT THE TIME OF SUCH HEARING THE COURT DID REQUEST THAT THE DEFENSE PRODUCE PROOF THAT SIMILAR-SITUATED INDIVIDUALS COULD HAVE BEEN TARGETED FOR SUCH "DRUG STASH HOUSE STINGS" BUT WERE NOT. PETITIONER WAS UNABLE AT THAT TIME TO SURMOUNT THE HURDLE PLACED BY UNITED STATES V. ARMSTRONG, _____ U.S. 2D _____ (), BECAUSE THE GOVERNMENT REFUSED TO TURN OVER CERTAIN DISCOVERY MATERIALS WHICH WOULD HAVE SUPPORTED THE FACT THAT THE GOVERNMENT HAD ENGAGED IN RACIAL PROFILING. IN FACT, THE GOVERNMENT DENIED THE EXISTENCE OF ANY MATERIAL, GUIDELINES, PLAYBOOKS, OR CRITERIA DURING DISPOSITION OF THE SELECTIVE PROSECUTION MOTION. DURING THE TRIAL IT WAS LEARNED THAT THE GOVERNMENT DID HAVE A PLAYBOOK, GUIDELINE, AND/OR MANUAL THAT DIRECTS HOW SUCH 'STINGS' ARE CONDUCTED. THEREFORE, THE GOVERNMENT WITHHELD EXCULPATORY INFORMATION BY DENYING ITS EXISTENCE. THIS ALSO WAS A 'FRAUD UPON THE COURT' BECAUSE THE GOVERNMENT WAS AWARE OF THE 'PLAYBOOKS' EXISTENCE AT THE TIME THAT IT DENIED SUCH WHEN PETITIONER MADE A REQUEST FOR SUCH DURING HIS DISCOVERY DEMANDS. PETITIONER ALSO SUBMITS THAT AFTER OBTAINING SUCH INFORMATION ON THE PLAYBOOK CRITERIA HE WAS ABLE TO USE THAT INFORMATION TO OBTAIN FURTHER "NEWLY DISCOVERED" INFORMATION WHICH WAS SUBMITTED IN A FEDERAL DISTRICT COURT IN NEW JERSEY (JUDGE NOEL HILLMAN) WHICH CONTAINS PROOF THAT NUMEROUS CAUCASIAN MALES WERE AVAILABLE FOR "DRUG STASH HOUSE STINGS" BY A.T.F. BUT WERE NOT SELECTED FOR SUCH STINGS. SEE - EXHIBIT "A" "NAMES, DATES, AND CRIMINAL HISTORY OF CAUCASIAN OFFENDER'S WHO COULD HAVE BEEN SELECTED FOR DRUG STASH HOUSE STINGS BUT WERE NOT.

THERE IS NO QUESTION THAT THE RECORD IN THIS MATTER EXPOSES A PATTERN OF FAILURES BY THE GOVERNMENT TO LIVE UP TO ITS GOOD FAITH DUTY TO TURN OVER EXCULPATORY INFORMATION. THIS FAILURE ALSO SUPPORTS WASHINGTON'S POSITION THAT THE SUPPRESSION OF SUCH PLAYBOOK CAUSED A FRAUD UPON THE COURT AND MAKES SUCH INFORMATION "NEWLY DISCOVERED".

A JUDICIAL DECISION OR ORDER OBTAINED OR ISSUED BASED UPON FRAUD ON THE COURT MAY BE REVIEWED OR RECONSIDERED WITHOUT USING THE STANDARD OF REVIEW UNDER ABUSE OF DISCRETION. SEE - UNITED STATES V. STRADFORD, 394 FED. APPX. 923 925 (3D CIR. 2011); NIX V. WHITESIDE, 89 U. ED 2D 123 (1986)('COUNSEL IS PRECLUDED FROM TAKING STEPS OR IN ANY WAY PRESENTING FALSE EVIDENCE OR OTHERWISE VIOLATING THE LAW'); IN RE CUN, 803 F.2D 1004 (9TH CIR. 1986)('A LAWYER'S DUTY TO A "COURT" CONSISTS IN MORE THAN NOT PUTTING FALSE EVIDENCE BEFORE THE COURT [IT IS] A DUTY NOT TO MISREPRESENT THE EVIDENCE IN ARGUMENT BEFORE THE COURT'); UNITED STATES V. TEMPLE, 349 F.2D 116, 117 (4TH. CIR. 1965)("LYING TO A JUDGE IS CERTAINLY MISBEHAVIOR ...").

THE PETITIONER ALSO SUBMITS THAT THE ENCLOSED SUBMITTED "NEWLY DISCOVERED" EVIDENCE OF SIMILAR-SITUATED INDIVIDUALS MEETS THE CRITERIA OF RULE 60(b) UNDER THE FOLLOWING:

- A.) 60(b)(2) - NEWLY DISCOVERED EVIDENCE THAT, WITH REASONABLE DILIGENCE, COULD NOT HAVE BEEN DISCOVERED IN TIME FOR A NEW TRIAL UNDER 59(b);
- B.) 60(b)(3) - FRAUD, MISREPRESENTATION, OR MISCONDUCT BY AN OPPOSING PARTY;
- C.) 60(b)(6) - ANY OTHER REASON THAT JUSTIFIES RELIEF.

THE QUESTION NOW IS WHAT CORRECTIVE ACTIONS MUST THIS COURT UNDERTAKE?

UNDER RULE 60, AN EXPLICIT SAVINGS CLAUSE EMPOWERS EACH FEDERAL COURT "TO SET ASIDE A JUDGMENT FOR FRAUD UPON THE COURT". FED. R. CIV. P. 60(b); SEE - GENERALLY AVERBACH V. RIVAL MFG. CO., 809 F.2D 1016 (3D CIR.)("RULE 60(b) RECOGNIZES "THE COURT'S INHERENT POWER TO GRANT RELIEF EVEN WHEN EQUITABLE PRINCIPLES MIGHT BAR A PARTY FROM SUCH RELIEF"); KUPFERMAN V. CONSOLIDATED RESEARCH AND MFG. CORP., 459 F.2D 1072, 1074, NOTE 1 (2D CIR. 1972)(" A FINDING OF FRAUD ON THE COURT EMPOWERS THE DISTRICT COURT TO SET ASIDE THE JUDGMENT SUA SPONTE"). THIS PROVISION CODIFIES "THE HISTORIC POWER OF EQUITY TO SET ASIDE FRAUDULENTLY BEGOTTEN JUDGMENTS". HAZEL-ATLAS GLASS CO. V. HARTFORD EMPIRE CO., 88 U. ED 1250 (1944).

PETITIONER ADDITIONALLY SUBMITS THAT HE REQUESTED AND WAS DENIED THIS VERY SAME "NEWLY DISCOVERED" EVIDENCE AS PART OF HIS DISCOVERY DEMANDS. IF THIS HAD

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GRANTED BACK THEN. THE FACTS DISCOVERED NOW WOULD HAVE MOST LIKELY BEEN
DISCOVERED AND SUCH ISSUE'S WOULD HAVE BEEN BEFORE THE COURT AT THE TIME OF
ITS DECISION ON THE SELECTIVE PROSECUTION MOTION.

PETITIONER WASHINGTON NOW ASKS THAT THE COURT GRANT HIM THE OPPORTUNITY
TO PRESENT THIS EVIDENCE IN ORDER THAT THE COURT WILL RIGHT THE CONSTITUTIONAL
WRONG THAT HAS BEEN DONE BY THE WITHHOLDING OF SUCH EVIDENCE AND THE DISCOVERY
OF THE NEWLY DISCOVERED EVIDENCE SHOWING SIMILAR-SITUATED WHITE DEFENDANTS WHO
WERE NOT PROSECUTED, BUT WHO COULD HAVE BEEN PROSECUTED FOR A.T.F. DRUG STASH
HOUSE STINGS BASED ON THE CRITERIA OUTLINED IN THE RECENTLY RELEASED PLAYBOOK
AND THEIR (CAUCASIAN DEFENDANTS) PRIOR CRIMINAL BACKGROUNDS AND PROPENSITY TO
COMMIT VIOLENT CRIMES AND ROBBERIES.

REQUEST THAT THIS MATTER BE RE-OPENED IN THE INTEREST OF JUSTICE.

RESPECTFULLY SUBMITTED,


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DATED: JUNE 23, 2015

EXHIBIT (E)

U.S. judge: Evidence stings may racially profile

CHICAGO — A federal judge in Chicago has ordered prosecutors to turn over more government records to defense teams seeking to prove agents racially profiled their African-American clients in stings involving phony drug stash houses.

Judge Ruben Castillo ruled on Friday lawyers defending eight suspects in two cases have raised legitimate questions about whether agents used racial criteria to target the men. That would be unconstitutional and could result in charges being dropped.

Castillo's ruling says defense attorneys presented "troubling statistics" that of 60 people charged since 2010 in the northern Illinois district with robbing phony stash houses, 48 were Black. Eleven were Latino and just one was white.

It also cites documents pointing to one, mostly white gang that agents didn't target even though there were indications it was committing drug-related robberies.

These are three EXHIBITS to support my motion for newly discovered evidence to re-open my Racial Profiling Motion.

A. Washington